

## EUROPEAN UNION

In the face of a political and economic crisis affecting the European Union and many of its member states, protection of human rights was rarely a priority in 2012, especially when those negatively affected were marginalized or unpopular groups, such as Roma, migrants, and asylum seekers.

Despite deteriorating rights in Hungary and elsewhere, EU institutions largely failed to live up to the promise of the EU Charter of Fundamental Rights, with the European Council particularly reluctant to hold member states to account for abuse.

### EU Migration and Asylum Policy

Despite efforts towards establishing the Common European Asylum System (CEAS) by the end of 2012, migrants and asylum seekers continue to experience gaps in accessing asylum and poor reception and detention conditions, including for unaccompanied children. At this writing, the EU had not adopted a coordinated response to the Syrian refugee crisis, and Syrians had access to varying levels protection in different member states.

In April, the EU adopted the Action on Migratory Pressures strategy detailing a broad range of steps, including strengthening the capacity of countries outside the EU to control their borders and the capacity for those countries to provide refugee or humanitarian protection to individuals who might otherwise seek to travel on to EU countries.

Boat migration across the Mediterranean decreased, although over 300 people died at sea between January and November. In April, the Parliamentary Assembly of the Council of Europe (PACE) adopted a report documenting a “catalogue of failures” by EU member states, Libya, and NATO resulting in the deaths of 63 boat migrants in April 2011. Negotiations continued to create the European Border Surveillance System (EUROSUR) amid concerns that it lacked clear guidelines and mechanisms for ensuring rescue of migrants and asylum seekers at sea.

In September, the European Union Court of Justice (CJEU) annulled rules governing sea surveillance by the EU border agency Frontex, including where rescued boat migrants are to be disembarked, because the European Parliament had not approved them. The rules remain in effect until new ones are adopted. An inquiry that the European ombudsman launched in March into Frontex compliance with fundamental rights continued at this writing. Frontex appointed its new fundamental rights officer in September.

Efforts to revise common EU asylum rules progressed, with changes to the EU Qualification Directive agreed in December 2011 providing clearer recognition of gender-specific forms of persecution and gender identity as ground for protection. The European Parliament and the European Council were expected to give changes to the Reception Directive and Dublin II Regulation their final approval by the end of 2012. Changes on minimum reception conditions would improve access to employment and oblige states to identify vulnerable groups, but still allow detention of asylum seekers, including unaccompanied children.

Changes to Dublin II would block transfers to countries where an asylum seeker risks inhuman or degrading treatment, following a December 2011 ruling by the CJEU on Greece, and improve safeguards but leave intact the general rule that the first EU country of entry is responsible for claims. In September, the CJEU ruled that member states must provide minimum reception standards to all asylum seekers awaiting transfer under Dublin II.

In September, the European Commission released its mid-point assessment of the Action Plan for Unaccompanied Minors, noting improvements in coordination, dedicated European funding, and the European Asylum Support Office's positive role, but also problems with data collection. Discrepancies in age assessment procedures continued, with insufficient procedures in Greece, Italy, and Malta affecting access to appropriate services. Unaccompanied children faced detention in the EU, including Greece and Malta. In July, Malta initiated a review of immigration detention, including policies affecting children whose age is disputed.

In September, Denmark joined efforts by Norway, the UK, and Sweden—through the EU-funded European Return Platform for Unaccompanied Minors (ERPUM)—to initiate the return of unaccompanied Afghan children to Afghanistan, despite serious risks of violence, military recruitment, and destitution. At this writing none had been returned.

In March, the EU adopted a framework for facilitating refugee resettlement, including increased funds. Five EU countries formally announced national resettlement programs in 2012, but resettling refugees displaced by conflict in Libya the previous year progressed slowly. In September, Germany resettled 195 refugees who had taken shelter in Tunisia.

In June, EU interior ministers endorsed a proposal allowing member states to reinstate border controls within the Schengen area—a free movement zone comprising 25 EU and other countries—if a country fails to control external EU borders. There were enduring concerns that countries, including France, Germany, the Netherlands, and Italy, use ethnic profiling to conduct spot-checks at internal borders. In response to a 73 percent increase over last year in asylum applications from Balkan countries—primarily from Roma and ethnic Albanians from Serbia and Macedonia, the vast majority rejected—some member states including Germany and France pressed for renewed visa restrictions on Balkan citizens, and in October, the European Commission called on Balkan states to do more to arrest the trend.

## **Discrimination and Intolerance**

A Fundamental Rights Agency survey published in May showed destitution and social exclusion among Roma in 11 EU countries, with high levels of unemployment (over 66 percent) and low levels of secondary school graduation (around 15 percent). In May, a European Commission assessment on progress by member states in integrating Roma found gaps in health care and housing. In August, the commission announced it was monitoring evictions and removals of Eastern European Roma from France, and in September wrote to Italy asking for information about discrimination against Roma.

The European Commission against Racism and Intolerance (ECRI) warned in May that economic downturn and austerity were feeding intolerance and anti-immigrant violence. Council of Europe (CoE) Commissioner for Human Rights Nils Muižnieks called in July for a “European Spring” to counter anti-Muslim prejudice, citing bans on full-face veils and ethnic profiling by police as examples.

In October, the EU adopted a directive on minimum standards for victims, obliging states to ensure access to justice without discrimination, including for undocumented migrants.

At this writing, 14 EU member states had signed (but not ratified) the CoE Convention on preventing and combating violence against women and domestic violence, including the United Kingdom in June, and Belgium and Italy in September.

## **Counterterrorism**

European parliamentarians and victims continued to demand accountability for complicity in counterterrorism abuses. The European Court of Human Rights (ECtHR) heard arguments in May in its first case on European complicity in rendition to torture by the United States concerning German citizen Khaled al-Masri who was detained in Macedonia in 2003 before the US rendered him to torture in Afghanistan. At this writing, similar cases against Poland, Romania, and Lithuania remained pending before the court.

A European Parliament report and accompanying September resolution condemned the lack of transparency and use of state secrecy impeding public accountability for collusion in abuses. The report urged full inquiries in Romania, Lithuania, and Poland, and called on other EU countries to disclose information about secret CIA flights on their territory.

## **Human Rights Concerns in Select EU Member States**

### ***France***

A summer campaign to evict Roma camps and remove migrant Roma from France echoed a similar push in 2010, raising questions about pledges by Socialist President François Hollande, elected in May, to tackle discrimination. By mid-September, an estimated 4,000 people had been forcibly evicted, and hundreds returned to Eastern Europe.

The UN special rapporteurs on housing, migrants' rights, minority rights, and racism issued a joint statement in August expressing concern over authorities' failure to provide alternative housing, the risk of collective expulsions, and stigmatization of Roma. The French government moved in September to ease restrictions on access to employment for Eastern Europeans, including Roma, and signed a new agreement with Romania on deportations providing for reintegration projects.

In September, the government backtracked on a proposal to introduce stop forms for identity checks—a way to improve police accountability and address persistent concerns about ethnic profiling—in the face of strong opposition from police unions. The rights ombudsman

recommended reforms in October and legal rules on pat-downs during such checks. In June, France's highest criminal court ruled that police powers to ask individuals to prove their right to be in France, regardless of behavior, violated EU free movement norms.

The government moved to limit detention of children with their families pending deportation, after an ECtHR ruling in January against France for detaining two young children with their parents for two weeks in 2007. A July government circular clarified that detention of families with children remained possible if families do not respect the conditions of compulsory residence in a particular place or if one or more family members abscond.

In February, the ECtHR ruled in a case brought by a Sudanese asylum seeker that the fast-track asylum procedure, including lack of suspensive appeal, did not provide effective protection against refoulement.

The European Committee for the Prevention of Torture (CPT) expressed concern in April about conditions and treatment in police and immigration detention, prisons, and psychiatric facilities, recommending further reforms to ensure that all suspects can access a lawyer from when they first enter police custody.

Parliament adopted a new sexual harassment law in late July, after the Constitutional Court struck down previous legislation for vagueness. The new law protects a broader range of situations beyond employment and introduces protections based on gender identity. In November the government tabled a bill to legalize same-sex marriage.

In October, one man was killed and eleven arrested in multi-city raids following a mid-September grenade attack on a Jewish supermarket outside Paris. At this writing, parliament was examining draft legislation to criminalize acts of terrorism abroad by French citizens. The measure, first proposed by the previous administration after a man claiming to be inspired by al-Qaeda shot seven people in March—including three Jewish children and a rabbi—would allow prosecution for participating in terrorism training abroad.

### *Germany*

The Federal Constitutional Court ruled in July that asylum seekers and refugees should receive the same welfare benefits as German citizens, ordering retroactive payments starting

from 2011 to approximately 130,000 people. The suicide of an asylum seeker in Würzburg in March launched a series of nationwide protests about conditions in reception centers, restrictions on freedom of movement, and obstacles to employment for asylum seekers.

German states, including Lower Saxony and Nordrhein-Westfalen, continued to deport Roma to Kosovo despite concerns about inadequate reception conditions, including problems accessing and integrating into the educational system.

Three senior intelligence officials resigned in July after repeated failures to correctly identify and investigate a neo-Nazi cell responsible for murdering nine immigrants and a policewoman. In October, a Frankfurt court upheld a 2002 ruling that awarded compensation to a man later convicted of murdering a child because a police officer had threatened violence during his interrogation.

At this writing, the lower house of parliament was examining two different bills to make racist motivation an aggravating circumstance during sentencing for criminal offenses, as well as a bill to introduce hate crimes as a specific category. In October, the Koblenz administrative appeals court ruled that it was unlawful and a violation of anti-discrimination law for German police to use racial profiling to conduct checks for irregular migrants, annulling an earlier February decision that had permitted the police tactic.

In September, the federal justice minister drafted legislation to clarify the legality of religiously motivated circumcisions, following a June Cologne court ruling that circumcising young boys amounted to criminal bodily harm. The ruling provoked considerable debate about freedom of religion and rights of the child. The same month, Chancellor Angela Merkel called for greater tolerance towards Muslims.

### *Greece*

There was widespread hardship and protest in 2012 amid economic crisis. The far-right anti-immigrant Golden Dawn party entered parliament for the first time with 7 percent of the vote in the June general election.

Legislation passed in April permits police to detain migrants and asylum seekers on overly broad public health grounds, including susceptibility to infectious disease based on

national origin and living in conditions that do not meet minimum hygiene standards, prompting condemnation by the UN Committee Against Torture (CAT).

The new government continued its predecessor's heavy-handed immigration control approach. Construction of a 12.5-kilometer fence along the border with Turkey, begun in February, neared completion at this writing. A vast sweep operation launched in August had by mid-November led to more than 50,000 presumed undocumented migrants being detained for questioning based on appearance alone, and more than 3,700 arrests. By the end of October, over 1,900 of these had been deported and 1,690 had returned home under the International Organization for Migration's (IOM) voluntary program. The operation continued at this writing.

Critical problems with the asylum system persisted. New government bodies inaugurated in March to oversee asylum reception and application processing were not fully operational due to staffing delays by November. Severe obstacles to submitting asylum applications remained, and latest available figures show Greece remained in 2011 the country with the lowest overall protection rate at first instance in Europe (2 percent).

In July, September, and November, the ECtHR ruled in five separate cases that Greece had subjected undocumented migrants and asylum seekers in detention to inhuman and degrading treatment. In October, the government extended permissible detention of asylum seekers from 3 to 15 months (and from 6 to 18 months for those who applied for asylum only once detained), a decision likely to increase overcrowding in detention.

Greece established five new detention camps for undocumented migrants between April and October, with more facilities planned on islands in response to increased arrivals in 2012, including of Syrians. The European Commission, the CPT, and CAT noted problematic conditions in detention centers, while nongovernmental reports documented substandard detention conditions on islands including overcrowding, poor hygiene, and limited access to health care, water, and food.

Xenophobic violence reached alarming proportions with regular attacks on migrants and asylum seekers, and growing evidence of the involvement of Golden Dawn members. In October, the public order minister presented a draft presidential decree to create

specialized police units to tackle racist violence, following a commitment in September by the justice minister to initiate legislative reforms to toughen hate crime sentencing.

The Council of State, the highest administrative court, ruled in November that criteria for acquiring citizenship under a 2010 law were too lenient; the government announced it would present stricter requirements shortly.

The Joint United Nations Programme on HIV/AIDS, voiced its concern in May after the government published photos and personal information, including HIV status, of accused sex workers after police arrested them for allegedly having unprotected sex with customers while HIV positive.

In May, the UN Committee on the Rights of the Child (CRC) expressed deep concern about inhumane conditions experienced by children with disabilities at the Lechaina Children's Care Center and urged Greece to ensure that children with disabilities are never placed in such conditions.

### *Hungary*

A new constitution and cardinal laws entered into force on January 1, 2012, weakening human rights protection, stripping the constitutional court of some powers, and undermining judicial independence, including a forced retirement affecting 300 judges. In November, the CJEU ruled that lowering the retirement age for judges constituted unjustified age discrimination.

In January, 348 religious groups lost their status as "churches" under the new constitution. The constitution also defines the right to life as starting from conception, raising concerns about reproductive rights; limits the right to vote for persons with mental disabilities; and defines family in a way that excludes lesbian, gay, bisexual, and transgender (LGBT) people.

In November, the Hungarian Constitutional Court ruled unconstitutional a law adopted in April criminalizing homelessness with repeat offenders subject to fines or imprisonment. No one was prosecuted while the law was in force.



Despite criticism by the CoE, the European Commission, and the Organization for Security and Co-operation in Europe (OSCE) representative on media freedom, the Hungarian government failed to sufficiently amend problematic media laws. The main media regulator, the Media Council, lacks political independence, potential fines for journalists are excessive, and requirements for content regulation are unclear. Journalists and media outlets reported self-censorship and editorial interference. At this writing, the Media Council had yet to renew the long-term broadcast license of leading independent news station Klubradio, despite three court rulings in the station's favor.

Roma continue to face discrimination and harassment. In July and August, right-wing paramilitary groups marched through Romani settlements threatening residents and attacking homes. In August, paramilitaries threw stones and bottles at Romani houses and shouted threats in Devecser during a march against "gypsy crime." Police were present at the time but made no arrests. A police investigation was ongoing at this writing.

There were several anti-Semitic attacks against Jewish leaders and memorials. In October, two assailants beat and insulted a Jewish leader in Budapest. He suffered minor injuries. Police later arrested the attackers, who were in custody at this writing.

Hungary continued to return asylum seekers and migrants to neighboring countries, including Serbia and Ukraine, despite lack of access to asylum, risk of return to persecution in third countries, and in the case of Ukraine, risk of ill-treatment in detention. In October, the ECtHR ruled in two separate cases that Hungary had unlawfully detained asylum seekers in 2010 without effective judicial review of their detention.

### *Italy*

An estimated 18,000 asylum seekers who arrived in 2011 remained in reception centers, including emergency facilities, many awaiting final decisions on their applications. To date, 30 percent of those who arrived from North Africa since early 2011 had received some form of protection, including refugee status, subsidiary protection, or humanitarian leave to remain in the country.

In October, the Italian government issued rules for the reexamination of denied claims that could allow authorities to grant temporary protection. At this writing, it remained unclear

what would happen to those housed in facilities at year's end, when the "North Africa Emergency," which the government declared in February 2011, is set to expire.

Concern over living conditions and integration for asylum seekers and refugees, including the risk of homelessness and destitution, led German courts, as well as the ECtHR, to block transfers to Italy under Dublin II.

In February, the ECtHR ruled that Italy's summary "push-backs" of migrant boats to Libya in 2009 amounted to collective expulsions and exposed people to torture and cruel, inhuman, or degrading treatment in Libya or their countries of origin. The government indicated it would respect the ruling, but commitments reached with the new Libyan authorities in April raised questions over continued efforts to externalize border control in ways that violate human rights.

Summary returns to Greece continued, including of unaccompanied children and asylum seekers who stow away on ferries to Italy. In September and October respectively, Commissioner Muižnieks and UN Special Rapporteur on Migrants' Rights François Crépeau urged Italy to suspend all returns to Greece due to grave deficiencies in the country's asylum system.

Muižnieks urged the government to ensure implementation of the first national strategy on Roma inclusion, which it adopted in February, by establishing precise targets and allocating adequate resources. Roma continued in 2012 to face evictions from informal camps and segregation

In March, the ECtHR ruled Italy's expulsion of a Tunisian terrorism suspect in 2010 violated the prohibition of torture and ill-treatment and the court's order to stay removal.

In March, the UN Committee on the Elimination of Racial Discrimination (CERD) expressed serious concerns about racist violence in Italy, and urged measures to improve prevention, investigation, and prosecution. In June, the UN special rapporteur on violence against women recommended that Italy adopt a specific law on violence against women and ensure access to justice for victims, including Roma, Sinti, and undocumented migrant women.

In July, Italy's highest criminal court upheld the convictions of senior police officers for falsifying evidence in relation to police violence during the 2001 G8 summit in Genoa; it also upheld controversial long prison sentences of up to 15 years for some protesters over property destruction, ordering others to be reviewed.

In September, the same court upheld the 2011 in absentia convictions of 23 US citizens for the 2003 abduction and rendition to Egypt of an Egyptian imam known as Abu Omar, and ordered the retrial of five Italian intelligence officers, including two senior officials, whom lower courts had acquitted citing state secrecy.

### *The Netherlands*

The People's Party for Freedom and Democracy and Dutch Labor Party formally took power in a coalition government in November after winning the September elections. The anti-immigrant Freedom Party lost nine seats.

In September and October, parliament suspended deportations of children who have been living in the Netherlands for at least five years, and postponed implementation of tighter family reunification requirements. Both measures will be considered now that a government has been formed.

The Council of State, the highest administrative court, ruled in July that Somalia was not a safe country of return, and ordered that dozens of Somali failed asylum seekers be released from immigration detention. The previous government halted deportations of gay Iraqis in June, and in July announced a policy to grant protection to Iraqis seeking asylum based on sexual orientation or gender identity.

In August, the Dutch national ombudsman and the CPT criticized conditions in immigration detention. The CPT expressed concern over families with children being detained for longer than the 28-day maximum permitted by law. They urged the government to only detain children in exceptional circumstances and without locking them in cells.

During the Netherlands' Universal Periodic Review (UPR) at the Human Rights Council (HRC) in May, numerous countries recommended measures to combat discrimination and racism.

At this writing, parliament was due to examine draft legislation tabled in August to eliminate the sex reassignment surgery requirement for transgender people who want to get a new identification document.

### *Poland*

In March, news emerged that Poland's former intelligence chief had been charged over complicity in CIA secret detention on Polish territory. The ECtHR agreed in July to examine a case brought by a Saudi national, currently held in Guantánamo Bay, who alleges he was held incommunicado and tortured in a secret CIA facility in Poland in 2002-2003.

In September, parliament passed a law authorizing appointed provincial governors, rather than the courts, to decide on appeals against denials of permission to hold a public demonstration. In September, the OSCE called for Poland to repeal its defamation laws after a court convicted Robert Frycz, editor of the *Antykomor.pl* website, for insulting the president, and sentenced him to 15-months of community service.

In September, parliament voted against a bill to liberalize access to abortion and contraception, and institute comprehensive sex education. In October, the ECtHR ruled that Poland violated the rights of a 14-year-old rape victim who was denied a legal abortion.

### *Romania*

A political crisis between the president and prime minister led the government to take steps that undermined separation of powers and the rule of law.

Following a May constitutional court ruling that the president, rather than the prime minister, should represent Romania in EU meetings, the government in July stripped the court of its powers to overrule parliamentary decisions, replaced the ombudsman with a party loyalist, and took control of the official gazette that publishes court decisions and laws, in order to delay Constitutional Court rulings coming into effect.

In July, the European Parliament, European Commission, and CoE criticized these actions as contrary to the rule of law, with Commission President José Manuel Barroso referring to possible infringement proceedings. A July European Commission report raised serious concerns about Romania's commitment to the rule of law. It called on the country to

reverse measures impacting judicial independence and appoint an ombudsman with cross-party support.

Romanian authorities continued in 2012 to deny allegations that they housed a secret CIA prison to detain and interrogate terrorism suspects, despite a joint investigation by the Associated Press and German public television ARD Panorama, and German newspaper *Süddeutsche Zeitung*, which in December 2011 identified the former location of the prison in Bucharest.

Discrimination and marginalization of Roma remained a concern. Approximately 150 Roma were forcibly evicted in June from informal settlements in Baia Mare, northwestern Romania, and relocated to a former chemical plant without adequate accommodation or sanitation. Several hundred more faced imminent eviction from other informal settlements in Baia Mare.

### *Spain*

Demonstrations continued throughout 2012 as the government imposed austerity measures amid a deepening economic crisis, and protester and police violence that included use of rubber bullets. The UN Committee on Economic, Social and Cultural Rights (CESCR) expressed concern in June that austerity measures disproportionately affect vulnerable groups, highlighting forced evictions without due safeguards, curtailed access to health services for undocumented migrants, and deep cuts in education budgets.

In July, the ECtHR found that Spain had violated anti-torture and non-discrimination obligations by failing to investigate allegations that in 2005, police conducted a racially abusive identity check on an African woman who was a legal resident. In a separate ruling the same month, the court found that retroactive lengthening of prison sentences, limiting eligibility for parole for people convicted of terrorism offenses, violated fair trial standards. The ECtHR agreed in November to hear the Spanish government's appeal against the ruling.

In April, Frontex attributed continued low levels of boat migration to Spain to sea patrols and the country's migration cooperation with African countries. Spain forcibly removed to Morocco around 70 sub-Saharan Africans from a nearby Spanish island in September, despite media and NGO reports of migrant ill-treatment in Morocco and dumping at the

Algerian border. Two women and eight children were transported to Spanish mainland. In February, CAT published its decision against Spain for failing to investigate the responsibility of a Spanish coast guard unit in the 2007 drowning of a Senegalese man off Ceuta, the Spanish enclave in Morocco.

In February, the Spanish Supreme Court acquitted Judge Baltasar Garzón of abusing his judicial powers by investigating enforced disappearances during the Franco era between 1939 and 1975, despite Spain's amnesty law. Earlier that month, the same court convicted Garzón of ordering unlawful wiretaps in a corruption case and suspended him from the bench for 11 years.

In September, parliament rejected an opposition bill initiated under the previous government to improve Spain's anti-discrimination legislation. In November, the Constitutional Court upheld Spain's law on marriage equality. The justice minister announced his intention in July to limit access to abortion laws, but at this writing no draft legislation had been tabled.

### *United Kingdom*

In May, the government reduced pre-charge detention in terrorism cases from 28 to 14 days, but left open the possibility for parliament to reinstate 28 days in an emergency. Replacements to control orders on terrorism suspects no longer permit forced relocation and are subject to stricter time limits. But the new measures can still be based in part on secret evidence, and parliament can quickly approve harsher powers in an emergency.

A draft law in parliament at this writing would widen use of secret hearings in civil courts on national security grounds and prevent material that shows UK involvement in wrongdoing by other countries being disclosed. In September, the UN special rapporteur on torture expressed concern that the draft law could inhibit accountability for torture.

In January, the government halted a widely criticized inquiry into UK involvement in rendition and torture. It cited new criminal investigations into UK complicity in rendition and torture in Libya by former dictator Muammar Gaddafi's security forces. Although the government promised a second inquiry, it was unclear at this writing when it would begin, and whether it would have the necessary independence and powers.

In January, the ECtHR blocked deportation of Jordanian terrorism suspect Abu Qatada due to the risk of evidence obtained through torture being used against him at trial upon return, but also held that diplomatic assurances were sufficient to protect him from torture or ill-treatment. In November, a UK court ordered Qatada's release from custody saying it was not satisfied that he would receive a fair trial in Jordan; he was placed under house arrest.

In October, the UK extradited five terrorism suspects to the US after the ECtHR in September definitively rejected their appeals that they would face ill-treatment.

In June, the government signed the CoE Convention on preventing and combating violence against women and domestic violence, but continued to reject calls to sign the International Labour Organization (ILO) Convention on Decent Work for Domestic Workers. Instead, in April it changed immigration rules that will make it harder for foreign domestic workers to leave abusive situations without losing their immigration status.

The UK continued to deport failed Sri Lankan Tamil asylum seekers, including 25 on a chartered flight in September, despite evidence of torture upon return for some Tamils with perceived links to Sri Lanka's separatist Tamil Tigers.

Official statistics published in August revealed that the number of children being detained with their parents pending deportation was rising, although such detention is limited to one week. In April, the UK Border Authority suspended a pilot program to use dental x-rays to determine age, amid medical ethics concerns.

In September, the UK's chief prosecutor announced he would develop guidelines related to prosecuting offensive speech on the internet and social media after a series of controversial convictions raised free expression concerns.